

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF NEW YORK

UNITED STATES OF AMERICA

Plaintiff

vs.

JOHN THOMAS ERMIN
a/k/a "Tommy O"

Defendant

REPLY AFFIDAVIT

**Hon. Magistrate Judge
Jeremiah J. McCarthy**

CASE NO. 1:23-CR-99

STATE OF NEW YORK }

} SS:

COUNTY OF NIAGARA }

GEORGE V.C. MUSCATO, being duly sworn, deposes and says:

1. I am the attorney for JOHN THOMAS ERMIN, currently charged with Count 1 - Obstruction of Justice Conspiracy, Count 2 - Witness Tampering Conspiracy, Count 3 - Witness Retaliation Conspiracy and Count 24 (a violation of 18 U.S.C. §922(g)(3)) - Unlawful user of Controlled Substance in Possession of Firearms in an unsealed superseding indictment.

2. With respect to his violation of 18 U.S.C. 922(g)(3), this attorney was duly retained. Subsequently, a superseding indictment was filed and the defendant was arraigned on January 10, 2024. The Court permitted this attorney to appear provisionally.

3. The Government is now seeking a copy of Defendant Ermin's Form 23 Financial

Affidavit.

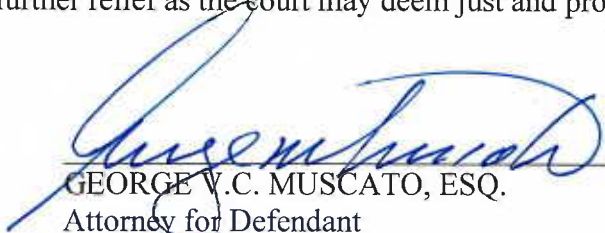
4. In light of the Government's filing on Friday that the Government is not seeking the death penalty, the issue of obtaining a copy of the defendant's Form 23 Financial Affidavit would appear to be moot. Frankly, at the initial arraignment, Attorney Mark Foti specifically asked the Assistant U.S. Attorney whether they intended to pursue the death penalty. Their answer was equivocal leading the court to appoint Learned Counsel for two of the Defendants Hinkle and Gogolack. The court then allowed Defendants Gerace and my client Ermin a period of time to submit our Financial Affidavits bearing directly on the issue of appointment of "learned counsel."

5. As a result of the Government's actions, as late as Friday, the Financial Affidavit should be sealed as irrelevant to any issues before the court and not available to the government.

6. The CJA explicitly requires that a defendant may seek certain "investigative, expert and other necessary services for adequate representation" by way of an ex parte application and further provides that the court determine that such application for such services after appropriate inquiry in an ex parte proceeding. 18 U.S.C. §3006A(e)(1) Certainly a learned Counsel in support of representing a defendant has been considered by the courts as an expert in the area of dealing with death cases.


7. Lastly, I join in any response of co-defendant Gerace in opposition to the Government's motion.

WHEREFORE, we ask that the Government be denied access to my client's Financial Affidavit, together with such other and further relief as the court may deem just and proper.



GEORGE V.C. MUSCATO, ESQ.
Attorney for Defendant

Sworn to before me this 26th
day of February, 2024.



Notary Public

ANNE T. ROTELLA
Notary Public, State of New York
Qualified in Niagara County
My Commission Expires 11/30/2026